IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

WP(C).No. 30331 of 2006(J)

LAR.133/1996 of ADDL.SUB COURT,KOLLAM

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PETITIONER:

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1. GOURIKUTTY AMMA,
   RESIDING AT VETTIYIL PADINJATTATHIL,
   KOTHAPURAM, KARALI JUNCTION P.O.,
   WEST KALLADA, KOLLAM-690 543.

2. T.GOPALAKRISHNA PILLAI,
   RESIDING AT VETTIYIL PADINJATTATHIL,
   KOTHAPURAM, KARALI JUNCTION P.O.,
   WEST KALLADA, KOLLAM-690 543.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENT:

STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, KOLLAM.

BY GOVERNMENT PLEADER SRI.S.DILEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, ALONG WITH WP(C) NOS. 30186/2006, 30228/2006 AND 33592/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: COPY OF THE ORDER DATED 30.3.2002 IN LAR NO. 133/1996 PASSED BY THE ADDITIONAL SUBORDINATE JUDGE'S COURT, KOLLAM.

EXT. P2: COPY OF THE ORDER DATED 23.12.2005 IN IA NO. 1792/2005 IN LAR NO. 133/1996 PASSED BY THE ADDITIONAL SUBORDINATE JUDGE'S COURT, KOLLAM.

EXT.P3: COPY OF THE ORDE DATED 23.12.2005 IN IA NO. 1793/20058 IN LAR NO.133/1996 PASSED BY THE ADDITIONAL SUBORDINATE JUDGE'S COURT, KOLLAM.

EXT.P4: COPY OF THE ORDER DATED 23/12/2005 IN IA NO. 10794/2005 IN LAR NO. 133/1996 PASSED BY THE ADDITIONAL SUBORDINTE JUDGE'S COURT, KOLLAM.

(TRUE COPY)

P.A. TO JUDGE

K.T.SANKARAN, J

W.P.(C) No.30331/2006,
W.P.(C) No. 33592/2006,
W.P.(C) No. 30228/2006 &
W.P.(C) No.30186/2006

Dated this the 2nd day of January, 2007

JUDGMENT

In all these Writ Petitions the challenge is against the order passed by the Additional Sub Court, Kollam in Land Acquisition Reference Cases where by the application filed by the claimant in the respective cases to set aside the exparte judgment was dismissed by the court below. The reference court passed Ext. P1 judgment on the ground that the claimant was not present. There is no discussion on the merits of the case. The court below "confirmed" the award passed by the Land Acquisition Officer. A Land Acquisition reference is not an appeal wherein the court is expected to confirm the award passed by the Land Acquisition Officer. In Joseph v. Government of Kerala (1991(2) KLT 69), a Division Bench of this court held that where a reference is made to the court under Section 18 of the Land Acquisition Act, it is the duty of the court to determine the

amount of compensation payable for the land acquired. The court cannot refuse to determine the amount of compensation even where the claimant remains absent or fails to adduce evidence. The court is bound to pass an award and it cannot dismiss the reference for default. In Khazan Singh v. Union of India (2002(1) KLT 644(SC)) the Supreme Court affirmed the view taken by the High Court in Joseph v. Government of Kerala and held that the Civil court has to pass an award in answer to the reference made by the collector under Section 18 of the Act. Non participation of any party would not confer jurisdiction on the Civil court to dismiss the reference for default.

It is true that the reference court was justified in holding that an application for restoration under Rule 9 order 9 would not be maintainable in view of the decision in Joseph Vs. Government of Kerala. But the very same decision says that reference court is not entitled to refuse to determine the amount of compensation, which was not taken note of by the court below. Therefore, Ext. P1 judgment in all the Writ Petitions are

set aside as there is gross violation of law and since the court did not follow the binding precedents. The reference court shall dispose of the reference cases, namely, LAR Nos. 273 of 1997, 91 of 1991, 47 of 1996 and 133 of 1996 on the merits. The claimants shall be afforded a reasonable opportunity to produce documents and to adduce evidence.

The Writ Petitions are allowed as indicated above.

K.T.SANKARAN,
JUDGE

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